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1.4 **Citations Discussed.** WAC 358-30-170; Baker v. Dep't of Corrections, PAB No. D82-084 (1983); Schonauer v. DCR Entertainment, 79 Wn. App. 808 (1995), *review denied*, 129 Wn. 2d 1014 (1996).

## II. FINDINGS OF FACT

2.1 Appellant Chuck Wendt was a Washington Management Service employee and permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on September 12, 2001.

2.2 Appellant began his employment with the state of Washington in 1982. Appellant was the Human Resources Administrator for the Employee Services Division within the DSHS Office of Personnel Operations. Appellant was responsible for overseeing Eastern Washington Regions 1 and 2. Appellant consulted with other DSHS managers regarding human resource activities and personnel/administrative policies, the merit system rules, and agency practices. Appellant supervised Charlene Spilker, Human Resources Manager and Shelley Phillips, Secretary Senior. Ms. Spilker had direct supervision over Trudy Flowers, Human Resource Consultant.

2.3 Ms. Phillips began working in the Employee Services Division on May 26, 1998. Ms. Phillips provided direct administrative/secretarial support for Appellant.

2.4 In December 2000, Appellant's direct supervisor, Candy Christensen, Chief of the Office of Personnel Operations, was conducting Appellant's performance evaluation. Ms. Christensen, whose duty station was located in Lacey, Washington, emailed Appellant's staff soliciting feedback regarding his performance for use as a part of her evaluation.

1 2.5 On December 3, Ms. Phillips responded by email that she was not comfortable with  
2 providing a response regarding Appellant's performance as her supervisor. Ms. Christensen  
3 subsequently contacted Ms. Phillips to find out why she was uncomfortable about giving feedback  
4 for Appellant's evaluation. Ms. Phillips became emotional and started to cry. After several  
5 conversations, Ms. Phillips eventually disclosed to Ms. Christensen that Appellant had been  
6 subjecting her to unwanted advances since shortly after she was hired. Ms. Christensen initiated a  
7 subsequent investigation into Ms. Phillips' claims.

8  
9 2.6 Appellant testified that after Ms. Phillips began to work with him, he and she "hit it off very  
10 well" and developed a close friendship and shared a "mutual attraction." Appellant denies,  
11 however, that he pursued Ms. Phillips or that he subjected her to any conduct of a sexual nature  
12 after October 29, 1998. In determining the facts of this case we have weighed the direct testimony  
13 of Appellant and Ms. Phillips. In addition, we heard testimony from Ms. Flowers and Ms. Spilker  
14 who worked with Appellant and Ms. Phillips and observed their interactions at work. We do not  
15 find Appellant's testimony credible and we find no reason or motive for Ms. Phillips to fabricate  
16 allegations that Appellant subjected her to unwanted attention. Furthermore, Ms. Phillips whose  
17 claims have been forthright and consistent, did not bring forth any allegations until she was  
18 encouraged to do so by Ms. Christensen. Therefore, we make the following findings:

19  
20 2.7 At the time of her hiring, Ms. Phillips was experiencing a number of serious personal issues,  
21 including a difficult divorce, a custody dispute, and she was attending counseling for domestic  
22 violence. In addition, Ms. Phillips was caring for her three young children. Because the previous  
23 incumbent in Ms. Phillips' position had left, Appellant was responsible for training Ms. Phillips in  
24 the duties of her position. As such, Appellant frequently called Ms. Phillips into his office where  
25 they spent a significant amount of one-on-one time together with his office door closed. During  
26 these meetings, Appellant also engaged Ms. Phillips in conversation about her personal situation

1 and problems. Ms. Phillips felt that Appellant was being a supportive friend and supervisor.  
2 During that period of her life, Ms. Phillips was vulnerable and Appellant made her “feel safe.”  
3 However, as time progressed, Ms. Phillips felt that Appellant had developed a “crush” on her. Ms.  
4 Phillips describes herself as a “people pleaser” and she did not directly address with Appellant her  
5 feelings of discomfort. However, Ms. Phillips and Appellant engaged in several discussions which  
6 resulted in Appellant writing Ms. Phillips a letter dated October 29, 1998, which reads as follows:

7  
8 As I was driving home last night I was thinking about our conversations over the  
last couple of days. . . .

9  
10 . . . You have been a very special and important part of my life and I am proud to  
call you my friend. We have shared many special moments, secrets and very  
personal experiences of our lives. . . .

11  
12 I know that I cannot be to you what you are seeking. However, I guess because of  
your qualities that I have described above, and our special relationship is why I  
13 have and still do want to be intimate with you. . . .

14 . . . .

15 I also wanted to thank you for your persistence in keeping my feet on the ground  
16 when my mind was sometimes elsewhere. It would have been very easy for me to  
falter (I still could you know!) But your strength and saying the right things was  
17 never offensive, nor did you ever make me feel embarrassed . . .

18 2.8 After reading Appellant’s letter, Ms. Phillips felt relieved because Appellant appeared to  
19 understand that she did not want to have a personal or intimate relationship with him. However,  
20 following October 29, 1998, Appellant continued to call Ms. Phillips into his office for closed door  
21 “meetings” that would last up to two hours. Frequently, the meetings would begin with discussions  
22 on work-related issues, but Appellant would eventually engage Ms. Phillips in conversations about  
23 personal and intimate matters. Appellant also questioned Ms. Phillips about her relationship with  
24 her boyfriend. After ending a meeting, Appellant often hugged Ms. Phillip before she left his  
25 office. In November 1998, Appellant appeared at Ms. Phillips’ home uninvited to deliver an ad  
26

1 regarding snow tires. On December 9, 1998, Appellant kissed Ms. Phillips as she was leaving his  
2 office. Ms. Phillips, who had not yet completed her probationary period, was fearful of telling  
3 Appellant to stop his behavior because she felt it might negatively impact her employment.  
4 Appellant engaged in inappropriate behavior toward Ms. Phillips throughout 1999.

5  
6  
7 2.9 Sometime in the month of November 1999, Ms. Flowers observed Ms. Phillips leaving  
8 Appellant's office. Ms. Phillips was visibly upset and appeared to have been crying. Ms. Flowers  
9 asked Ms. Phillips what was wrong, but Ms. Phillips refused to answer and stated she would tell her  
10 when she (Ms. Phillips) no longer worked there. At Ms. Flowers prompting the following day, Ms.  
11 Phillips finally revealed that Appellant was making advances toward her. Ms. Flowers told Ms.  
12 Phillips that staff's perception had been that she and Appellant had been engaged in a mutual  
13 relationship. Ms. Flowers also stated that Ms. Phillips would have to report the allegations to a  
14 higher authority, but that she should not report anything to Ms. Christensen because she was a good  
15 friend of Appellant's. Ms. Phillips became alarmed and asked Ms. Flowers not to report what she  
16 had revealed to her.

17  
18 2.10 Ms. Phillips was ashamed and embarrassed that other staff believed that she and Appellant  
19 were carrying on a close relationship. Shortly following her conversation with Ms. Flowers, Ms.  
20 Phillips spoke to Appellant about other staff's perceptions. Ms. Phillips also told Appellant that she  
21 "just wanted to go to work and do her job" and that she did not want to be called into his office for  
22 anymore lengthy closed door meetings.

23  
24 2.11 On December 23, 1999, Ms. Phillips was home ill. Appellant called her home to check on  
25 her and he volunteered to deliver Christmas office gifts to her home. Ms. Phillips declined  
26 Appellant's offer and told him that she would get the gifts when she returned to work. However,

1 later that day, Appellant appeared at Ms. Phillips' home unannounced to deliver the gifts.  
2 Appellant hugged Ms. Phillips prior to leaving. The gift from Appellant was a gift certificate to a  
3 local restaurant. When Ms. Phillips later learned that other office staff did not receive comparable  
4 gifts from Appellant, she returned the gift certificate to Appellant because she did not want to  
5 accept any special favors or attention from him.

6  
7 2.12 Other behavior that Ms. Phillips found unwelcome and which bothered her were efforts by  
8 Appellant to stand very close to her, comments he made about her appearance, and when he  
9 grabbed her hand, smelled her wrist, and complimented the fragrance of her lotion or perfume. On  
10 one occasion, Ms. Phillips had a wet spot on her blouse and Appellant asked, "Is this a wet shirt  
11 contest?" On another occasion, Ms. Phillips made a comment that if she gained anymore weight,  
12 she would not be able to get into her pants. Appellant replied, "I'd like to get into your pants."  
13 Other times, Appellant would enter Ms. Phillips' small work area to look at her computer and to  
14 maneuver the mouse. Ms. Flowers, whose office was next to Ms. Phillips', observed Appellant  
15 "crowding" Ms. Phillips and she also observed Ms. Phillips move to the far side of the office and an  
16 apparent attempt to move away from Appellant.

17  
18 2.13 In January 2000 Appellant was walking behind Ms. Phillips when he "swatted her on the  
19 butt." Ms. Phillips ignored Appellant and kept walking.

20  
21 2.14 Ms. Phillips described Appellant's actions toward her as offensive and unwelcome and as  
22 occurring on an ongoing basis until she made her report to Ms. Christensen in December 2000. Ms.  
23 Phillips felt grateful toward Appellant for his kindness and generosity, such as when he had an  
24 emergency buzzer system installed at the office in case her ex-husband appeared there. Ms. Phillips  
25 also felt indebted to Appellant for reclassifying her position upward in 1999 and for approving a  
26 flex schedule of her work hours. However, Ms. Phillips continued to feel uncomfortable and

1 “emotionally confused and trapped” because Appellant continued to make comments about her  
2 appearance and ask her personal and intimate questions. Ms. Phillips did not want to report  
3 Appellant because she did not want to hurt his career or marriage and she had promised him that she  
4 would never betray his confidences.

5  
6 2.15 After Ms. Flowers became aware of Appellant’s behavior toward Ms. Phillips, she met with  
7 her supervisor, Ms. Spilker, to report what she learned. Ms. Flowers and Ms. Spilker understood  
8 that Administrative Policy 6.04 required them to report the harassment to Appellant’s supervisor,  
9 however, they feared that Ms. Christensen would not believe them because of her friendship with  
10 Appellant. Their concerns about telling Ms. Christensen stemmed from comments Appellant made  
11 that he had such a close relationship with Ms. Christensen and that they were more like “brother  
12 and sister.” Ms. Flowers and Ms. Spilker also felt that Appellant would retaliate against them and  
13 Ms. Phillips and that they could lose their jobs. Both Ms. Flowers and Ms. Spilker agreed that they  
14 would not make a report as required by Policy 6.04. However, Ms. Flowers and Ms. Spilker  
15 subsequently began to take steps to protect Ms. Phillips from Appellant by interrupting meetings  
16 between Appellant and Ms. Phillips and by sitting next to Ms. Phillips during staff luncheons so  
17 that Appellant could not sit next to her.

18  
19 2.16 In mid-2000, Appellant and other staff began to make frequent trips from the Spokane office  
20 to Olympia. When Ms. Phillips made the travel arrangements, she would make attempts to arrange  
21 the airplane seating so that she would not have to sit next to Appellant. Ms. Flowers and Ms.  
22 Spilker also made attempts to sit next to Ms. Phillips to prevent Appellant from sitting with her  
23 whenever they were required to travel by plane for business related travel. However, on several  
24 occasions, Appellant changed the seating so that they could sit together. Appellant would ask Ms.  
25 Phillips about her relationship with her boyfriend, whether he was helping her out, and how he was  
26 treating her children. He also told her that he “wondered how it would have been like,” a comment

1 Ms. Phillips interpreted as meaning what it would have been like if they had been intimate. On one  
2 occasion, Appellant insisted on picking up Ms. Phillips at her home and driving her to the airport.  
3 On the return ride home, Appellant told Ms. Phillips that she was sexy and looked desirable. He  
4 also asked if her tan was real and whether she had a tan line. Appellant observed that Ms. Phillips  
5 had a scar on her leg, and he asked how long it was and then touched the scar along her thigh.

6  
7 2.17 As time progressed, Ms. Flowers and Ms. Spilker also observed Ms. Phillips' personality,  
8 which was normally positive and upbeat, had changed and she became quiet, subdued and distant.

9  
10 2.18 Ms. Phillips also took steps to avoid direct interaction with Appellant at the office. For  
11 instance, Ms. Phillips emailed Appellant about work related matter rather than entering his office.  
12 However, Appellant continued to insist that she meet with him and asked whether she was trying to  
13 avoid him.

14  
15 2.19 Appellant asked both Ms. Flowers and Ms. Spilker to keep an eye on Ms. Phillips. He told  
16 them that he had concerns with Ms. Phillips' work performance and with her use of phone and  
17 email for personal business. Appellant also asked Ms. Flowers and Ms. Spilker to stop speaking to  
18 Ms. Phillips about non-work related subjects because he did not want them to distract her. Both  
19 Ms. Flowers and Ms. Spilker felt uncomfortable with Appellant's request and saw it as retaliatory in  
20 nature. Appellant also asked Ms. Flowers and Ms. Spilker about Ms. Phillips' personal life, asking  
21 why Ms. Phillips was feeling down or asking questions about her boyfriend. Ms. Flowers and Ms.  
22 Spilker also observed Appellant displaying mood swings which varied depending on how Ms.  
23 Phillips was behaving.

24  
25 2.20 When Ms. Phillips asked Appellant whether he had any concerns about her work  
26 performance, Appellant indicated that she was doing a good job.



1  
2 2.21 Appellant had a hollow poster tube that he used as a baseball bat, but at times Appellant  
3 would tease Ms. Phillips with it and use it to “whack” her. Ms. Phillips became tired of the tube  
4 and she destroyed it. However, Appellant eventually obtained another poster tube and wrote the  
5 words, “Shelley Whack-her” on it. Appellant also used this tube to “whack” Ms. Phillips.

6  
7 2.22 Philip Wozniak, Acting Director for the Employee Services Division, was Appellant’s  
8 appointing authority. Mr. Wozniak reviewed Ms. Phillips allegations and reviewed the results of  
9 two investigations, as well as a written response from Appellant. He also met with Appellant to  
10 discuss and review Ms Phillips’ charges. During the meeting, Appellant denied that most events  
11 occurred or he offered alternative versions of them. Mr. Wozniak also met with Ms. Phillips, Ms.  
12 Spilker and Ms. Flowers about the incidents. Mr. Wozniak ultimately determined that there was  
13 credible evidence to show that Appellant pursued Ms. Phillips in hopes of having an intimate  
14 relationship with her and that he continued to pursue her once she informed him she was not  
15 interested in engaging in a romantic relationship with him. Mr. Wozniak felt that Appellant  
16 retaliated against Ms. Phillips when she did not respond to his advances by scrutinizing her work  
17 performance and asking her coworkers to stay away from her, which created a hostile work  
18 environment for staff.

19  
20 2.23 Mr. Wozniak found that Ms. Phillips, Ms. Flowers and Ms. Spilker felt intimidated by  
21 Appellant and were suffering internal conflict about coming forward. Mr. Wozniak felt that due to  
22 the small office and close knit relationships, Appellant’s actions did not have to be overt in order to  
23 affect the general work environment. In determining the level of discipline, Mr. Wozniak  
24 considered Appellant’s suggestion that a letter of reprimand was sufficient, however, Mr. Wozniak  
25 felt that Appellant had blatantly disregarded the agency’s policies on harassment, had lost all  
26 credibility as a human resources professional, and had created liability for the department. Mr.

1 Wozniak felt that Appellant used his role as a supervisor to inappropriately pursue a relationship  
2 with a subordinate, which seriously damaged his credibility to continue working in any capacity for  
3 DSHS. Mr. Wozniak considered Appellant's work history and positive work performance,  
4 however, he found that Appellant's conduct warranted termination.

5  
6 2.24 DSHS has adopted and published Administrative Policy 6.02 which requires employees to  
7 maintain high ethical and professional standards at all times and which prohibits sexual harassment.  
8 The policy defines sexual harassment as behavior of a sexual nature which is unwelcome and  
9 personally offensive to the recipient of the action. The policy further defines a hostile working  
10 environment as a working situation in which the employee has not suffered any tangible economic  
11 loss as a result of the alleged harassment but rather the employee has been subjected to a working  
12 environment that is sexually offensive or intimidating to the employee. The policy ensures that  
13 employees work in an environment free from unsolicited, unwelcome, and inappropriate sexual  
14 overtones and defines inappropriate behavior of a sexual nature as:

- 15
- 16 1. Behavior of a sexual nature which by itself or if repeated, could interfere  
with an employee's work ...
  - 17 2. Behavior of a sexual nature which could create an intimidating, hostile or  
offensive work environment; or
  - 18 3. Harassing behavior(s) such as threatening, demeaning or offensive conduct,  
19 whether or not sexual in connotation, that is directed toward an individual  
based on gender.
- 20

21 2.25 The policy provides examples of inappropriate behavior of a sexual nature, including  
22 unwelcome requests for sexual favors or social contact, non-verbal behavior which may include  
23 gestures, or physical behavior such as unwelcome touching, standing too close, cornering, leaning  
24 over or brushing against a person's body. The policy further requires that managers and supervisors  
25 model appropriate behavior.

26

### III. ARGUMENTS OF THE PARTIES

3.1 Respondent asserts that there is no evidence that Ms. Philips and Appellant were engaged in a mutual relationship prior to the October 29, 1998 letter. Respondent argues that Appellant's letter clearly stated that he wanted an intimate relationship with Ms. Phillips and supports the contention that Appellant overstepped the boundaries of the supervisor/subordinate workplace relationship. Respondent argues that Appellant continued to engage in a pattern of inappropriate behavior toward Ms. Phillips despite being clearly told stop. Respondent argues that Appellant's behavior was egregious, especially in light of his responsibility to oversee the personnel operations for all DSHS employees in eastern Washington, including the policies which address sexual harassment awareness and prevention. Respondent argues that Appellant created a perception that he and Ms. Christensen were close friends which created fear in Ms. Phillips, Ms. Flowers and Ms. Spilker and discouraged them from reporting his inappropriate behavior. Respondent argues that Appellant's actions constituted sexual harassment toward Ms. Phillips and created a hostile work environment for her, Ms. Flowers and Ms. Spilker. Respondent argues that termination is the appropriate sanction.

3.2 Appellant denies that he engaged in any inappropriate behavior toward Ms. Phillips, and he asserts that he and Ms. Phillips were good friends. Appellant asserts that the evidence shows that he supported Ms. Phillips during traumatic times and that although they became too close, they eventually agreed to be nothing more than friends. Appellant denies that he engaged in any inappropriate behavior or behavior of a sexual nature toward Ms. Phillips after October 29, 1998 and asserts he was operating under the assumption that he and Ms. Phillips were good friends. Appellant asserts that Ms. Phillips' fears that he was going to hurt her or her career are not supported by the evidence. Appellant asserts, instead, that he was supportive of Ms. Phillips and accommodated work schedule, promoted her and gave her good evaluations. Appellant argues that the evidence supports that he fostered a fun work environment for his staff and that he was known

1 as a caring and helpful individual. Appellant asserts that he did not engage in any sexual  
2 harassment; that he did not create a hostile work environment; and that he did not retaliate against  
3 Ms. Phillips by monitoring her or asking others to monitor her behavior or work performance.

#### 4 5 **IV. CONCLUSIONS OF LAW**

6 4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter  
7 herein.

8 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
9 the charges upon which the action was initiated by proving by a preponderance of the credible  
10 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
11 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
12 Corrections, PAB No. D82-084 (1983).

13  
14 4.3 Conduct is unwelcome if the employee does not solicit or incite it, and regards it as  
15 undesirable or offensive. Schonauer v. DCR Entertainment, 79 Wn. App. 808 (1995), *review*  
16 *denied*, 129 Wn. 2d 1014 (1996).

17  
18 4.4 Respondent has proved by a preponderance of the credible evidence that Appellant  
19 subjected his subordinate, Ms. Phillips, to uninvited and unwelcome behavior of a sexual nature.  
20 There is little dispute here that Appellant's conduct was unwelcome by Ms. Phillips and that she  
21 found Appellant's conduct offensive. Appellant's inappropriate and unwelcome behavior includes  
22 calling Ms. Phillips into his office with the door closed and asking her personal questions; kissing  
23 her at work; frequently hugging her; crowding her workspace and brushing up against her; visiting  
24 her house unannounced and uninvited; and manipulating travel plans to sit next to her and ask her  
25 personal questions.  
26

1  
2 4.5 Although many of Appellant's actions toward Ms. Phillips were not overtly sexual in nature,  
3 when viewed in the context of his prior conduct and comments to her that he wanted to be  
4 "intimate" with her, Ms. Phillips reasonably felt that Appellant's actions were subtle attempts to  
5 win her over. Ms. Phillips repeatedly rejected Appellant's "helpful" offers and she told him on  
6 numerous occasions that she wanted to report to work and perform the duties of her position, not  
7 carry on a personal relationship with him. Appellant flagrantly disregarded her requests and  
8 continued in his endeavors to ingratiate himself into Ms. Phillips' life. Appellant abused his  
9 authority as a supervisor and the poster tube bearing the words "Shelly Whack-her" was offensive  
10 and only served to further demean and humiliate Ms Phillips.

11  
12 4.6 Appellant's misconduct created an intimidating, hostile and offensive work environment for  
13 Ms. Phillips. Furthermore, Appellant's misconduct undermined the department's policy against  
14 sexual harassment and interfered with the department's ability to ensure that its employees were  
15 protected from any form of sexual harassment in the workplace.

16  
17 4.7 Ms. Phillips provided compelling testimony that she chose not to report Appellant's  
18 behavior, but rather chose to tolerate the harassment rather than risk losing her job. However, we  
19 are disconcerted by both Ms. Flowers' and Ms. Spilker's failure to come forward and report  
20 Appellant's behavior despite their awareness that Ms. Phillips was being subjected to unwanted  
21 advances from Appellant. We find it unfortunate that individuals within human resources, who  
22 clearly understood management's responsibility to prevent and stop workplace harassment, failed to  
23 protect a vulnerable member of their staff.

24  
25 4.8 Under the facts and circumstances of this case, including the seriousness of the offenses and  
26 the repeated pattern of Appellant's misconduct, we conclude that Respondent has proven that the

1 sanction of dismissal is appropriate, and the appeal should be denied and the termination should be  
2 upheld.

3

4

**V. ORDER**

5

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Chuck Wendt is denied.

6

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DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

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WASHINGTON STATE PERSONNEL APPEALS BOARD

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Gerald L. Morgen, Vice Chair

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René Ewing, Member

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